



Atty. Dkt. No. 084561-0108

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Mark LANDESMANN
Title: BUYER-DRIVEN TARGETING OF PURCHASING ENTITIES
Appl. No.: 09/888,439
Filing Date: 06/26/2001
Examiner: Khanh H. Le
Art Unit: 2100

Commissioner for Patents
Box NON-FEE AMENDMENT
Washington, D.C. 20231

Sir:

DECLARATION UNDER 37 C.F.R. §1.132

I, John Anthony Deighton, a citizen of South Africa, residing at 483 Pleasant Street #4, Belmont, MA 02478, declare and state that:

1. I graduated with a Ph D (1983) Wharton School, University of Pennsylvania; a MBA (1972) Graduate School of Business, University of Cape Town; and a BS (Chemical Engineering) (1968) University of Natal, South Africa.
2. I am a professor at the Harvard Graduate School of Business Administration focusing on how interactive technologies shape the practice of marketing. The positions I hold and have held are as follows:

Harvard University, Graduate School of Business Administration.

Harold M. Brierley Professor of Business Administration, 2000 to present

Professor of Business Administration, 1997 to 2000.

Associate Professor of Business Administration, 1994 to 1997.

University of Chicago, Graduate School of Business.

Associate Professor of Marketing, 1990 to 1994.

Assistant Professor of Marketing, 1987 to 1990.

Visiting Assistant Professor of Marketing, 1986.

Dartmouth College, Amos Tuck School of Business Administration.

Assistant Professor of Business Administration, 1982 to 1987.

Herbert Penny (Pty.) Limited, South Africa.

Managing Director of Consulting Division, 1973 to 1980.

Unilever (South Africa) Limited.

Brand Assistant and Brand Manager, 1969 to 1972.

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3. My publications and other activities include and have included:

Journal Articles:

Deighton, John (2002), "How Snapple Got its Juice Back," Harvard Business Review, January.

Sherman, Lee and John Deighton (2001), "Banner Advertising: Measuring Effectiveness and Optimizing Placement," Journal of Interactive Marketing 15 (2) (Spring).

Deighton, John (1997), "Commentary on 'Exploring the Implications of Marketing on the Internet,'" Journal of the Academy of Marketing Science, 25 (Fall).

Winer, Russell, John Deighton *et al* (1997), "Choice in Computer-Mediated Environments," Marketing Letters 8 (3) (July).

Deighton, John *et al* (1996), "The Future of Interactive Marketing," Harvard Business Review, November/December.

Blattberg, Robert C. and John Deighton (1996), "Manage Marketing by the Customer Equity Test," Harvard Business Review, July/August.

Deighton, John and Kent Grayson (1995), "Marketing and Seduction: Building Exchange Relationships by Managing Social Consensus," Journal of Consumer Research 21 (April).

Winer, Russell, John Deighton *et al* (1994), "When Worlds Collide: The Implications of Panel Data-Based Choice Models for Consumer Behavior," Marketing Letters 5 (3) (October).

Deighton, John, Caroline M. Henderson and Scott Neslin (1994), "The Effects of Advertising on Brand Switching and Repeat Purchasing," Journal of Marketing Research 31 (February).

Deighton, John (1992), "The Consumption of Performance," Journal of Consumer Research 19 (December).

Blattberg, Robert C. and John Deighton (1991), "Interactive Marketing: Exploiting the Age of Addressability," Sloan Management Review, 33 (Fall), 5-14. Reprinted in Business Edge, May 1992. Translated and reprinted in Harvard Business Manager, 15 (1) 1993.

Deighton, John, Daniel Romer and Josh McQueen (1989), "Using Drama to Persuade," Journal of Consumer Research, 16 (December).

Hoch, Stephen J. and John Deighton (1989), "Managing What Consumers Learn From Experience," Journal of Marketing, 53 (April).

Deighton, John and Robert M. Schindler (1988), "Can Advertising Influence Experience?" Psychology and Marketing, 5 (2).

Walsh, James P., Caroline M. Henderson and John Deighton (1988), "Negotiated Belief Structures and Decision Performance: An Empirical Investigation," Organizational Behavior and Human Decision Processes, 42.

Deighton, John (1984), "The Interaction of Advertising and Evidence," Journal of Consumer Research, 11 (December).

Book Chapters, Proceedings Articles and Invited Articles:

Deighton, John and Patrick Barwise (2001), "Digital Marketing Communication," in Digital Marketing : Global Strategies from the World's Leading Experts Ed. Jerry Wind and Vijay Mahajan. New York, NY: John Wiley and Sons

Deighton, John (2001), "Service Markets and the Internet," in Services Marketing: People, Technology, Strategy, Christopher Lovelock. Upper Saddle River, NJ.: Prentice Hall.

Deighton, John (2000), "Frequency Programs in Service Industries," in Handbook of Services Marketing and Management. Ed. Teresa A. Swartz and Dawn Iacobucci, Thousand Oaks, CA.: Sage Publications.

Deighton, John (1999), "Integrated Marketing Communications in Practice," in The Advertising Business, Ed. John Philip Jones, Thousand Oaks, CA.: Sage Publications.

Barwise, Patrick and John Deighton (1999), "Digital Media: Cutting Through the Hype," Mastering Marketing. London: Pearson Education Ltd.

Deighton, John (1996), "Features of Good Integration: Two Cases and Some Generalizations," in Integrated Communications: Synergy of Persuasive Voices, Ed. Ester Thorsen and Jeri Moore, Hillsdale, N.J.: Lawrence Erlbaum Associates.

Grayson, Kent and John Deighton (1995), "Playing and the Locus of Rules," in Frank R. Kardes and Mita Suja (eds.) Advances in Consumer Research, 22, 241-2.

Deighton, John, Don Peppers and Martha Rogers (1994) "Consumer Transaction Databases: Present Status and Prospects," in The Marketing Information Revolution, ed. Robert C. Blattberg, Rashi Glazer and John Little. Cambridge: The Marketing Science Institute.

Deighton, John, (1994), "Managing Services When the Service is a Performance," in Service Quality: New Directions in Theory and Practice, ed. Roland T. Rust and Richard L. Oliver. Thousand Oaks, CA: Sage Publications, Inc.

McQueen, Josh, Carol Foley and John Deighton (1993), "Decomposing a Brand's Consumer Franchise into Buyer Types," in Brand Equity and Advertising: Advertising's Role in Building Strong Brands, ed. David A. Aaker and Alexander L. Biel, Hillsdale, N.J.: Lawrence Erlbaum Associates.

Deighton, John and Stephen J. Hoch (1993), "Teaching Emotion with Drama Advertising," in Advertising Exposure, Memory and Choice, ed. Andrew A. Mitchell. Hillsdale, N.J.: Lawrence Erlbaum Associates.

Alwitt, Linda F., John Deighton and John Grimm (1991), "Reactions to Political Advertising Depend on the Nature of the Voter-Candidate Bond," in Television and Political Advertising, Volume 1: Psychological Processes Frank Biocca (Ed.) Hillsdale, NJ: Lawrence Erlbaum Associates.

Deighton, John (1988), "Two Meanings for Transformation," Advances in Consumer Research, 15, M. Houston (Ed.). Ann Arbor: Association for Consumer Research.

Deighton, John (1987), "A Simple Representation of the Contingent Structure of Knowledge," Advances in Consumer Research, 14, P. Anderson and M. Wallendorf (Eds.). Ann Arbor: Association for Consumer Research.

Deighton, John (1986), "Persuasion as Directed Inference," Advances in Consumer Research, 13, R. Lutz (Ed.). Ann Arbor: Association for Consumer Research.

Deighton, John (1985), "Rhetorical Strategies in Advertising," Advances in Consumer Research, Volume 12, M. Holbrook and E. Hirschman (Eds.). Ann Arbor: Association for Consumer Research.

Deighton, John (1983), "How to Solve Problems that Don't Matter: Some Heuristics for Uninvolved Thinking," Advances in Consumer Research, 10, R.P. Bagozzi and A.M. Tybout (Eds.). Ann Arbor: Association for Consumer Research. Reprinted in Wallendorf and Zaltman, (Eds.). Readings in Consumer Behavior, 2nd Edition, Wiley, 1984.

Deighton, John, Francesco Nicosia and Yoram Wind (1983), "Exploration into the Time-Money Tradeoff: Concepts and an Application," Proceedings of the ESOMAR Annual Conference, San Francisco.

Case Studies and Teaching Notes:

- "Siebel Systems: Anatomy of a Sale. HBS Case #9-502-048
- "Centra Software." HBS Case #9-501-088
- "Bouygues Telecom." HBS Case #9-501-068
- "The Peppers and Rogers Group." HBS Case #9-500-096
- "Doubleclick buys Abacus A." HBS Case #9-500-091
- "Doubleclick buys Abacus B." HBS Case #9-501-085
- "Hilton Hotels: Loyalty Wars." HBS Case #9-500-079, Teaching Note TN#5-501-059
- "Webvan: Groceries on the Web." HBS Case #9-500-052
- "Alloy: Marketing to Generation Y." HBS Case #9-500-048, Teaching Note TN#5-501-043
- "The Brita Products Company." HBS Case #9-500-024
- "CVS: The Web Strategy." HBS Case #9-500-008, Teaching Note TN#5-501-064
- "Snapple." HBS Case #9-599-126, Teaching Note TN#5-500-033
- "MicroFridge: The Concept." HBS Case #9-599-049

"First Year Marketing Module Summary: Evolution of Marketing," HBS TN #598-017

"USA Today Online," HBS case #9-958-133, Teaching Note, " TN #5 599 097

"Dendrite International (A) (condensed)," HBS case #597-072.

"Rogers Communications Inc.: The WAVE," HBS case #597-050, Teaching Note," HBS TN #597-078.

"Note on Marketing and the World Wide Web," HBS case #597-037.

"SiteSpecific," HBS case #596-117.

"IDS Financial Services (condensed)," HBS case #596-045, Teaching Note," HBS TN #596-061.

"Consumer Behavior Exercise (A), (B), (C), (D), (E) & (F)," HBS case #596-039, 596-040, 596-041, 596-042, 596-043 & 596-044.

"McNeil Consumer Products Company: Tylenol," in The Ethical Manager. Ed. Ronald M. Green, Macmillan 1994.

CONFERENCE DESIGN

Conference Co-Chair, Marketing Science Institute, "Research Frontiers in Interactive Marketing," Cambridge, MA September 1997.

Conference Chair, Harvard Business School, "The Future of Interactive Marketing," Boston, MA May 1996.

Program Committee, Association for Consumer Research Annual Conference, 1996, 1997, 1998, 2000, 2001, 2002.

CONFERENCE PRESENTATIONS

University of Maryland, Invited paper, "Branding customers," January 2002.

Association for Consumer Research, "A close analysis of a loyalty program," Annual Conference, San Antonio, October 2001.

Rutgers University, Invited paper, "Branding customers," April 2001.

University of Rhode Island, North East Marketing Seminar, Invited paper, "Branding customers." April 2001.

University of Exeter, Invited paper, "Marketing in the information age," March 2001

University of Manchester Institute of Technology, Invited paper, "Marketing in the information age," March 2001

London Business School, Invited paper, "Marketing in the information age," March 2001

Queen's University, Belfast, Invited paper, "Marketing in the information age," March 2001

Dublin City University, Invited paper, "Marketing in the information age," March 2001.

Georgia State University, Invited paper, "Managing customers for profit," February 2001.

Keio University, Osaka, Japan. Visiting professor, July 2000.

INSEAD Summer Marketing Camp. Invited paper, "When does the Internet favor incumbent firms?" June 2000.

Erasmus University, Rotterdam, Netherlands, Keynote Address, "Interactive marketing," May 2000.

Marketing Science Institute, Miami, FL., Invited paper, "Sources of increasing returns on the Internet," December 1999.

Association for Consumer Research, "*Assimilating innovations*," (with Susan Fournier) Annual Conference, Columbus, October 1999.

American Marketing Association, San Francisco, CA., Invited paper, "The Web and persuasion," August 1999.

Georgetown University, Invited paper, "*Marketing meets the Internet*," April 1999.

Emerson College, Davis Symposium, Invited presentation, "*Interactive marketing*," April, 1999

University of California, Davis, Invited paper, "*Interactive marketing*," February 1999.

Wharton Conference on Digital Marketing, "*Digital Communication*," Wharton School, University of Pennsylvania, October 1998.

Vanderbilt University, Frontiers in Services Marketing Conference Keynote address, "*Branding the Customer*," September 1998.

Association for Consumer Research, "*Special Session Chair: Computers as Social Actors*," Annual Conference, Montreal, Canada, October 1998.

American Marketing Association, Doctoral Consortium, "*Marketing Research in Interactive Media*," Atlanta GA September 1998.

Emory University, Relationship Marketing Conference, "*Digital Seduction*," June 1998.

Academy of Marketing Science Faculty Consortium, Keynote Address, Norfolk, VA., May 1998.

COTIM Keynote Address, "*Marketing in the Age of Addressability*," Brussels, Belgium, November 1997.

Association for Consumer Research, "*Special Session Discussant: Virtual Spaces as Consumer Environments*," Annual Conference, Denver, CO, October 1997.

Direct Marketing Education Foundation Address, September 1997.

American Marketing Association, Summer Educators' Conference, "*The Interactive Future: Competition and Collaboration between Marketing and Information Technology*," Chicago, IL, August 1997.

Stanford University Graduate School of Business, "*Interactive Marketing*," Marketing Camp, Palo Alto, July 1997.

University of Toronto, Faculty of Management Studies, Invited Paper, "*Loyalty programs*," Toronto, February 1997.

Association for Consumer Research, "*Special Session Synthesis: Cognitive Evidence for Literary Theory*," Annual Conference, San Diego, CA., October 1996.

American Marketing Association, Summer Educators' Conference, "*Integrated Marketing Communications*," San Diego, CA. August 1996.

Columbia University Graduate School of Business, Columbia Invitational Symposium on Choice Modeling and Behavior, New York, July 1996.

American Marketing Association, New York Professional Services Marketing Leadership Council, "*Interactive Marketing*," New York, NY February 1996.

Quest Futures Group, "*A Future of Advertising and Advertising Agencies*," Annual Meeting, San Diego, CA., February 1996.

Association for Consumer Research, "*Customer Value: A Framework for Analysis and Research*," Annual Conference, Minneapolis, MI., October 1995.

University of Illinois, Champaign-Urbana, Marketing Technologies Symposium, "*Interactive Marketing: Evolutionary or Revolutionary?*" IL, September 1995.

American Marketing Association, School of Database Marketing, "*Database Marketing Enters the Marketing Mainstream*," University of Notre Dame, South Bend, IN, August 1995.

Business Week Forum, "*Branding in an Interactive Communications Environment*," Forum on Corporate Branding, Chicago, IL., June 1995.

Association of National Advertisers, *"Integrated Marketing in Practice,"* Scottsdale, AZ., May 1995.

Association for Consumer Research, *"Constructing Virtual Relationships,"* Annual Conference, Boston, MA., October 1994.

Association for Consumer Research, *"Framing Consumption as Play,"* Annual Conference, Boston, MA., October 1994.

American Marketing Association, *"Strategies for Managing Interaction,"* Summer Educators' Conference, San Francisco, CA., August 1994.

American Marketing Association, *"The Marketing Information Revolution,"* Summer Educators' Conference, San Francisco, CA., August 1994.

Marketing Science Institute, *"The Future of the Marketing Communications Industry: Implications of Interactivity,"* Cambridge, MA., March 1994.

American Marketing Association, *"Marketing after Integration,"* Winter Educators' Conference, St. Petersburg, FL., February 1994.

Association for Consumer Research, *"The Consumption of Performance,"* Annual Conference, Nashville, TN., October 1993.

Duke Invitational Symposium on Choice Modeling and Behavior, Duke University, Fuqua School of Business, Durham NC July 1993.

Columbia Business School, *"Marketing and Seduction,"* Marketing Camp, Arden House, New York, NY., June 1993.

American Marketing Association, *"The Schema for Marketing Strategy Development"* (with Caroline M. Henderson and James P. Walsh), Winter Educators' Conference, California, January 1993.

ORSA/TIMS, *"The Economics of Addressability,"* Joint National Meeting, San Francisco, CA., November 1992.

Association for Consumer Research, *"Sincerity, Sham and Satisfaction in Marketplace Performance,"* Annual Conference, Chicago, IL., October 1991.

American Academy of Advertising, *"Integrated Marketing Communications,"* Reno, NE., March 1991.

RR Donnelley, *"The Addressable Consumer: Implications for the Practice of Marketing,"* Corporate Technical Colloquium, Chicago, January 1990.

ORSA/TIMS, *"The Interaction Between Advertising and Promotion,"* (with Caroline Henderson and Scott Neslin), Joint National Meeting, New York, NY., October 1989.

Advertising Research Foundation, *"Persuasive Effects that Tracking Studies May Miss,"* Tracking Marketplace Performance, New York: June 1988.

4. I declare that I have reviewed and understood the following prior art references:

A US-6434534 B1 08-2002

U Privacy fears raised by DoubleClick database plans by Courtney Macavinta, January 25, 2000, downloaded from <http://news.com.com/2100-1023-236092.html?tag=m.>, 8/8/20

V Privacy Activists File DoubleClick Complaint, by Keith Perine, the Industry Standard, Feb. 10, 2000

W Data Mining: Staking a Claim on Your Privacy, January 1998, downloaded from <http://www.ipc.on.ca/english/pubpres/papers/datamine.htm>, 8/0/02

X Information technology and the privacy of the Individual, The Role of Privacy in Modern Society, by Dave Redell, Sep. 23, 1992 downloaded from <http://home.pacbell.net/webright/personal/acm.text>

U Permission Marketing by Seth Godin, Simon and Schuster, copyright 1999, chapter 10

V Permission Marketing: the Way to make advertising work again (Interactive Marketing) (excerpt from "Permission marketing: Turning Strangers into Friends and Friends into Customers", Chapter 2) also published as Dialog # 01777383, File # 570, by Hoke Communications Inc.

5. I declare that I have read and understood the specification and drawings for application serial number 09/888,439 filed on June 26, 2001, titled "BUYER-DRIVEN TARGETING OF PURCHASING ENTITIES" and have read and understood claim 1, set out below.

6. Reviewed Claim 1.

1. (Amended) A method for buyer-driven targeting by a system comprising:

receiving directly or indirectly from each of a plurality of buyer entities at least one respective third party purchase record or information verifiably derived therefrom, said purchase record or information verifiably derived therefrom comprising data associated with the purchase of products or services for which the payment was not carried out by the system;

storing information associated with said data;

for a plurality of product or service items offered for sale, wherein different items in said plurality of items are either manufactured or marketed or distributed or provided by different third party advertisers in a plurality of third party advertisers, and wherein said manufacture, marketing, distribution or provision is not carried out by the system in the ordinary course of business, making or helping make with respect to at least one of said buyer entities, based at least in part on said data, at least one discriminatory decision associated with the offering of at least one from among a plurality of different preferential contingent incentives, with each incentive associated with at least one of said items and associated with one of the third party advertisers, wherein there is at least one different

preferential contingent incentive from each of a plurality of the different third party advertisers, each of said incentives offering at least one benefit in exchange for at least one action associated with a possible purchase of at least one of said items, each item associated with at least one of said third party advertisers, said benefit not normally and publicly accessible to said buyer entity or other buyer entities in the same geographic region on terms which are at least objectively equivalent, and which do not include material conditions that are different from said at least one action, said discriminatory decision regarding the at least one incentive that is to be offered to the buyer entity being based at least in part on stored data relating to purchases made by said buyer entity from merchants other than the third party advertiser that is associated with the incentive; and

offering or facilitating the offering of at least one of said preferential contingent incentives to said buyer entity, without transferring to said third party advertiser directly or indirectly any full name associated with said buyer entity at the time that the incentive is offered but has not yet been responded to by said buyer entity, with the condition precedent for this step that the system has received directly or indirectly from that buyer entity the at least one respective third party purchase record or information verifiably derived therefrom.

7. I declare, based on my 14 years of experience with respect to the direct marketing industry and my knowledge of direct, database and interactive marketing practices, that the invention defined in claim 1 is novel in view of the prior art references cited above and also in view of my knowledge of the art. I also believe the invention to be non-obvious, certainly to a person of ordinary skill in the art, such as a direct or incentive marketer or a database marketing specialist, including one with a focus on the acquisition of new customers or the provision of customer acquisition services. I base this conclusion on the following:

8. I shall use the term "buyer" to refer to buyer entities such as households, individuals and small businesses that consume products and services. I shall use the term "advertiser" to refer to merchants, manufacturers, agents and others who supply products and services to buyers. The invention of claim 1 defines a method, referred to as the "system" to create a working forum or marketplace to link buyers to advertisers. Advertisers may use it to make offers to new buyers with a view to inducing them to become new customers or to significantly improve their relationships with buyers who are already

customers. Buyers may use it to profile themselves in order to get attractive incentives from advertisers without having to reveal their identities to the advertisers.

9. THE PROBLEM: For most advertisers, a relatively small number of their customers account for a disproportionately large share of revenues and profits. Advertisers seek new buyers who are like these high-value customers. They also want to know whether, among the large number of their less profitable customers, there may be some who are disproportionately profitable to competitors and therefore might be induced to spend more with the advertiser. Both needs could be met if advertisers could examine the past purchase histories of buyers for evidence of future potential, and then selectively communicate with the best prospects. However, the prior art provides advertisers with few ways to do so. Efforts to supply advertisers with such information run into several problems that have generally proved intractable until now. The following are the problems as I see them.

First, an advertiser can generally not obtain reliable and relevant purchase information from competing sellers, because these merchants do not want to make their customer lists available to their immediate competitors. For example, a retailer will likely refuse payments made with the card of a credit card company which forwards that retailer's transaction data to competitors.

Second, no single advertiser can provide a comprehensive profile about a particular buyer because that advertiser generally possesses only a fraction of that buyer's purchase history, namely only records of the transactions that the buyer made with that advertiser.

Third, advertisers can generally not sell the individually identifiable information of buyers without obtaining the permission of those buyers (or informing those buyers of their practices in this regard, and allowing them to opt-out). This is because of privacy laws, such as the Gramm-Leach-Bliley Act, and public pressure. I believe most buyers will only rarely grant that permission to let a company – even one that they trust – resell their personal transaction data, because they do not know nor can they control how their information is used by the party or parties to whom their data is sold.

Fourth, while advertisers can in principle pay buyers to supply them with transaction data, they cannot pay the value of the data. The value of each buyer's transaction history is unique to that history, but the advertiser cannot appraise that value without seeing the data. Yet once the data are known to the advertiser, there is no reason to go through with the purchase. Without an intermediary, the prices that advertisers pay buyers for buyer

transaction histories will likely be lower than the value of the histories, especially for those of the most attractive buyers.

Fifth, another reason that advertisers cannot pay the value of the data is that its value further depends on an unknown variable; namely, the willingness and propensity of that buyer entity to actually respond to any promotions that are later sent to that buyer on the basis of the information provided. Therefore this propensity to respond to future promotions cannot be priced into the value of the data.

Sixth, although buyers are sometimes willing to answer questions about their purchase behavior in exchange for a reward, I believe that such information is known to be highly unreliable because buyers may not answer these questions accurately. Buyer answers may be even less reliable if they know that the answers they give to questions would be routinely used to give better rewards to some consumers than to others, because they then have an incentive to lie about their true purchase behavior.

10. I declare that the combination of claim 1 includes the necessary elements to create a marketplace for a fundamental trade between interested buyers and advertisers, with the combination of claim elements creating a variety of unique and non-obvious features, motivations, and synergies. The claimed combination addresses problem 1 because the buyer, not an advertiser, discloses the information to an intermediary (which need not be the system itself.) Problem 2 is addressed by the requirement that there be a participating group of third party advertisers across an industry or across multiple industries. Problem 3 above (the permission problem) is addressed by the fact that the intermediary between these advertisers and the buyer is capable of earning a reputation for trust, making it possible for the provision of the information to be voluntary by the buyer. The claimed combination also goes toward solving problems 4 and 5 above, the information valuation problems, because the consideration offered to the buyer participating in the system is not paid on receipt of the information, but is contingent on the buyer performing specified action. The claimed combination addresses problem 6 because it requires that the information transferred directly or indirectly from the buyer entity be in the form of verified transaction records, so that there is a high potential that the information is reliable.

From the advertiser's standpoint, the advertiser could not cost-effectively afford to make such promotions available to everyone, because doing so would entail attracting "opportunity seekers," by which I mean people who take advantage of the initial promotion despite having no longer-term purchase interest. The system is not accessible to opportunity seekers for several reasons. First the incentives are contingent on buyers

taking specific actions. Second the incentives are preferential, by which I mean differentiated in magnitude among the buyers so that those buyers most valued by an advertiser receive the largest incentive. Third buyers must have directly or indirectly transferred verifiable purchase data to the system before they may participate in the promotions. Note that an unusual effect of this system and method is that it facilitates advertisers targeting their most attractive and expensive promotions to buyers who are frequent customers of their competitors (who obviously would not willingly provide such data for this purpose.)—i.e., the records and/or information are coming from outside the advertiser's own system.

11. With specific reference to Walker '534, this patent is directed to promoting the use within the system of a credit card through incentives. There is no suggestion in Walker to transfer in third party generated records or other verifiable information from outside of the system's credit card payment business, nor is there any suggestion to offer incentives from among a plurality of incentives provided by the third party advertisers, nor to allow any third party advertisers to benefit from the information and potentially access directly or indirectly the purchase records of their competitors. Coupled with the above, there is no making or helping to make a decision regarding the eligibility of a particular buyer entity to be offered a differential contingent incentive from a third party advertiser. Also, the rewards offered by Walker are based only on a particular use of the system's financial account or credit card, and do not relate to the purchase of third party products. Because Walker does not offer third-party incentives and because in Walker there are no third party advertisers, there is no need to find a method which allows these third party advertisers to use information, but without receiving it in personally identifiable form, and there is no recognition of the privacy issue.

12. Based on my 14 years of experience in/with respect to the retail, advertising/marketing industry/ies, it is my opinion that one of ordinary skill in the industry at the time of the filing for this invention, would not have been motivated to either modify Walker or to create a new combination in view of the other prior art references listed above, or in view of any other prior art references that I may be aware of, in order to create the combination of elements of claim 1.

13. The MacAvinta reference and Perine reference refer to the attempted merger of the Doubleclick database with the Abacus database and simply demonstrate that actual

purchase histories are known valuable commodities and discuss potential privacy concerns and the lack of consumer permissions. There is no discussion of the information valuation problem or any of the other elements of the claimed invention. The data mining article published by Ontario's Information and Privacy Commissioner, "Data Mining: Staking A Claim On Your Privacy," simply recognizes that personal information can be a property right of the consumer. The article by Dave Redell on Information Technology and Privacy refers to select merchants using "point-of-sale equipment" to more efficiently capture transaction information at the point of sale which pertains to the goods sold by these same merchants. Seth Godin's Permission Marketing, Chapter 10, and the several case studies he cites, including Bonus Mail by Intellipost, Cybergold, Amazon.com, AOL, Value America, Yoyodyne, InfoBeat and MyYahoo relate to the proposition that it would be more effective to obtain the permission of the consumer before sending him/her communications. However, Godin never contemplates the trade of verifiable transaction information by buyers (or by anyone else) for a benefit, the significant heretofore unsolved problems regarding such a trade, nor any solution to these problems, much less the solution proposed by the present invention. Likewise, I have reviewed each of the other references cited above. These references do not describe the combination of elements set forth in claim 1, or provide a motivation to modify the Walker patent to create a new system that includes the combination of Claim 1, or to create a new system not necessarily based on Walker that includes the combination of Claim 1.

14. It is my opinion that one of ordinary skill in the art would typically be a direct or incentive marketer or a database marketing specialist with a focus on the acquisition of new customers or the provision of customer acquisition services. Despite these specified references, it is my opinion that it is inherently non-obvious for such a marketer to recognize applicant's way of incenting a consumer to self profile in a privacy-protected manner by creating a central profile hosted by a trusted party with the potential for a universe of different cross-industry incentives from independent third party merchants, to thereby obtain a comprehensive past purchase history across a variety of products and industries that give the consumer profile the accuracy necessary for highly tailored incentives, and at the same time, because of the differential nature of these incentives, make the consumer amenable to receiving targeted communications containing these incentives. My opinion that such a system is inherently not obvious, is based on the fact that the system depends for its effectiveness on the simultaneous presence of six elements:

1. That there is a transfer of transaction records or information derived from transaction records into the system from outside the system.
2. That the information is submitted on the initiative of the buyer entity.
3. That the information comprises "*third party purchase records or information derived therefrom.*"
4. That the incentive that is being offered promotes the product of a third party with a distinct business activity.
5. That the buyer receives "*contingent [and] preferential [differential]*" incentives upon the completion of specified actions.
6. That the incentive for the advertiser's product or service is offered to the buyer without disclosing the identity of the buyer to the advertiser.

15. It is my opinion that the present claimed invention has the potential for creating a fundamental synergy generated by an ever-increasing cross-industry database of verifiable buyer entity purchase information incenting an ever-increasing cross-industry set of contingent differential incentives, and vice versa. The greater the number of participating buyers, the greater the attractiveness of the present system to new third party advertisers. In turn, as the number of third party advertisers increases, the system becomes increasingly attractive to buyers, and the number of participating buyers increases as well.

16. It is my opinion that the present claimed invention has a similar synergistic effect with respect to the virtuous cycle between the provision of information of a buyer entity and its response to system-generated incentive offers. As a buyer entity augments its profile with increasingly comprehensive and varied information, it receives better (more highly remunerated) incentive offers, and becomes more likely to respond. As it responds by purchasing products or accepting incentive offers, that information will normally be uploaded into the system as well. Because advertisers/merchants have the greatest interest in paying for the provision of incentive offers to those buyers that have a track record of previously responding to system-generated incentive offers, the attractiveness of their incentive offers increases further, which increases the response of buyer entity, and so forth.

17. It is my opinion that a final synergy that the present system generates is that advertisers compete for the business of buyers by setting incentive reward levels that will give their particular incentive offer a higher standing as buyers sort their incentive offers by

level of attractiveness, or as the system presents these offers to buyers in a sequence determined by their value. As a result of this competition, a market is effectively created for the new business of a buyer entity, based on that buyer entity's purchase record, and its demonstrated propensity to respond to incentive offers for new products and services.

18. Based on my 14 years of relevant experience, I state unequivocally that the combination of elements set forth in claim 1 is novel and non-obvious in view of the cited prior art and in view of my own personal knowledge of the prior art.

I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Respectfully submitted,

By: 

(JOHN ANTHONY DEIGHTON)

Dated: March 11, 2003